Cosmo Temasya Sdn Bhd v Tham Kut Cheong & Ors

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–411 OF 2004
KAMALANATHAN RATNAM J
25 OCTOBER 2004

Land Law — Conveyancing — Option — Termination of option although purchaser agreed not to insist on power of attorney – Whether deal was through — Whether injunction to restrain vendor from disposing with property should be allowed

Companies and Corporations — Shares — Option to purchase shares — Termination of option although purchaser agreed not to insist on power of attorney — Whether deal was through — Whether injunction to restrain vendor from disposing with property should be allowed

The third defendant on behalf of the other defendants had granted an option to the plaintiff to purchase some shares in the third defendant and certain properties ('the shares and property') for consideration of RM8 million. The plaintiff agreed to buy the shares and property. A series of correspondence followed, culminating in a letter issued by the defendants' solicitors dated 25June 2004 wherein stated that the defendants would not be giving the plaintiff any power of attorney as requested by the plaintiff. By their reply letter dated 28 June 2004, the plaintiff's solicitors agreed that the grant of a power of attorney was not a pre-condition for the sale. This letter was faxed to the defendants' solicitors on the same day, at 4.16 pm. On the same day, the defendants terminated the deal without acknowledging receipt of the plaintiff's faxed letter. The plaintiff applied for an injunction to restrain the defendants from dealing with the shares and property.

Held, allowing the plaintiff's application:

The defendants had deliberately refused to acknowledge receipt of the faxed letter from the plaintiff's solicitors confirming that they no longer insisted on the need for a power of attorney and in which case the deal was through. The plaintiff had satisfied this court that it was in order to grant the orders prayed for (see paras 4 and 5).

[**Bahasa Malaysia summary**

Defendan ketiga bagi pihak defendan-defendan lain telah memberi opsyen kepada plaintif untuk membeli beberapa saham di dalam defendan ketiga dan harta tertentu ('saham dan harta') sebagai balasan RM8 juta ringgit. Plaintif telah bersetuju membeli harta dan saham tersebut. Ia disusuli dengan siri surat-menyurat, sehingga mengakibatkan sepucuk surat dikeluarkan oleh peguamcara defendan bertarikh 25 Jun 2004 menyatakan bahawa defendan tidak akan memberi plaintif surat kuasa wakil seperti yang diminta oleh plaintif. Melalui surat balas bertarikh 28 Jun 2004, peguamcara plaintif bersetuju bahawa

pemberian surat kuasa wakil bukanlah prasyarat untuk jualan tersebut. Surat ini telah dihantar melalui faks kepada peguamcara defendan pada hari yang sama pada pukul 4.16 petang. Pada hari itu juga defendan telah menamatkan perjanjian tanpa mengakui penerimaan surat faks plaintif. Plaintif memohon injunksi untuk menahan defendan berurusan dengan saham dan harta tersebut.

Diputuskan, membenarkan permohonan plaintif:

Defendan telah dengan sengaja tidak mahu mengakui penerimaan surat faks yang dihantar oleh peguamcara plaintif yang mengesahkan mereka tidak lagi menegaskan keperluan surat kuasa wakil dalam kes di mana urusan telah dijalankan. Plaintif telah memuaskan hati mahkamah bahawa ia adalah mengikut peraturan untuk memberi permohonan yang diminta (lihat perenggan 4 dan 5).]

Notes

For cases on options in conveyancing, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2333-2351

For cases on option to purchase shares, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) para 750

For options, see 8 *Halsbury's Laws of Malaysia* para [150.496]

Balwant Singh Purba (N Shanmugam with him) (Balwant Singh & Co) for the plaintiff. David Hoh (Lim & Hoh) for the defendants.

Kamalanathan Ratnam J:

I THE APPLICATION

[1] This is the plaintiff's application for an injunction:

(1) to restrain the first to the seventh defendants from disposing of their shares in the eight defendant;

(2) to restrain the eight defendant from registering any sale of the shares of the first to seventh defendants to any other person;

(3) to restrain the defendants from disposing of three lots of property stated therein; and costs.

II FACTS

[2] An option dated 8 June 2004 was issued by the third defendant on behalf of the first to the seventh defendants to sell the shares in the eight defendant and the three lots of property for a total consideration of RM8 million free from encumbrances. The option was exercised by the plaintiff but the said option was given to one Ang Yeong Seng. By a letter dated 14June 2004, the eight defendant confirmed the exercise of the said option,

and by a letter dated 16 June 2004, the third defendant acting on his behalf and on behalf of all the defendants laid down the terms of the sale of the shares and the land. By a letter also dated 16 June 2004, the plaintiff's solicitors said that they were agreeable to buy the shares and the said assets, namely the three lots of property. Subsequently a series of correspondence followed between the plaintiff's and the defendants' solicitors culminating in a letter issued by the defendants' solicitors dated 25 June 2004 wherein they referred to a power of attorney sought by the plaintiff and they also referred to their earlier letter dated 18 June 2004 wherein they had specifically stated that the defendants would not be giving the plaintiff any power of attorney. By their reply letter dated 28 June 2004, the plaintiff's solicitors agreed that the grant of a power of attorney was not a pre-condition for the sale. This letter was faxed to the defendants' solicitors on the same day, at 4.16 pm. The plaintiff exhibited proof of the fax having been sent.

[3] About one and a half hours after receiving the plaintiff's fax, the defendants' solicitors wrote a letter, also dated 28 June 2004, terminating the deal. However, the said solicitors did not acknowledge receipt of the plaintiff's faxed letter.

[4] It is clear that the defendants deliberately refused to acknowledge receipt of the letter from the plaintiff's solicitors confirming that they no longer insisted on the need for a power of attorney and in which case the deal was through.

[5] The plaintiff has satisfied this court that it is in order to grant the orders prayed for.

Application allowed.

Reported by Loo Lai Mee